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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/075,381      | 02/15/2002  | Satoshi Misaka       | NIT-321             | 7226             |

7590 09/14/2004  
Mattingly, Stanger & Malur, P.C.  
Suite 370  
1800 Diagonal Road  
Alexandria, VA 22314

EXAMINER

DUNCAN, MARC M

ART UNIT PAPER NUMBER

2113

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,381

Applicant(s)

MISAKA ET AL.

Examiner

Marc M Duncan

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

### ***Claim Objections***

Claims 1-4 are objected to because of the following informalities: claims 1-4 are ostensibly method claims. A method claim requires a recitation of positive process steps. Claims 1-4 do not contain any recitations of positive process steps whatsoever and, in fact, appear to be apparatus claims and not method claims. In addition, claims 1-4 state "A computing system construction method." The examiner cannot determine anything in the claims that results in a method of constructing a computer. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. The examiner is

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unable to determine the metes and bounds of the claims from the current claim language and is therefore unable to provide a reasonable comparison with the prior art. Appropriate correction is required.

Claim 1 recites the limitation "the application program" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said application program" in line 14. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the common error code" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said application program" in lines 21-22. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said common error" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the numerical range" in line 24. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said common error code" in line 26. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "said common error code" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "said common error code" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the zero promotion" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said common error code" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the common error code" in line 18. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said common error code" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the numerical value" in line 24. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said common error code" in line 26. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the common error code" in line 29. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 5 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 5, as currently written, attempts to claim a program. A program is not a process, machine, manufacture or composition of matter, and is in fact an abstract idea and therefore cannot be considered to be statutory subject matter under 35 U.S.C. 101.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose current telephone number is 703-305-4622. The examiner's telephone number as of October 15, 2004 will be 571-272-3646. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 703-305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

  
ROBERT BEAUSOLIEL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER